federal register

Monday
June 15, 1992

Part VII

Department of Health and Human Services

Centers for Disease Control

Interim Revision of Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Interim Revision of Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs

AGENCY: Centers for Disease Control (CDC). Public Health Service, HHS.

ACTION: Interim Revision of Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs.

SUMMARY: Pursuant to the May 11, 1992 court decision in *Gay Men's Health Crisis* v. *Sullivan*, No 88–CIV–7482 (S.D.N.Y. 1992), the "Requirements for Content of HIV/AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs" are being revised. The interim revisions in the terms and conditions are described below.

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Gary West, National Center for Prevention Services, Centers for Disease Control, (404) 639–1480.

SUPPLEMENTARY INFORMATION: Since 1985, the Centers for Disease Control (CDC), as part of the terms and conditions for receipt of CDC funds for human immunodeficiency virus (HIV) prevention programs, has required that all educational and related program materials be reviewed by a Program Review Panel designated by the recipient. Since education about preventing HIV transmission involves effectively presenting sensitive subject matter, the purpose of this requirement has been to avoid disruptions of CDC-funded programs by requiring a careful consideration of the content and intended audience of the materials and programs. A guidance document for this review, entitled "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs," was last revised and published in the **Federal Register** on March 30, 1992 (57 FR 10794).

On May 11, 1992, the U.S. District Court for the Southern District of New York found unconstitutional the use of the "offensiveness" standard by Program Review Panels which review AIDS education materials and activities in CDC assistance programs. *Gay Men's Health Crisis* v. *Sullivan*, 88–CIV–7482 (S.D.N.Y. 1992).

On May 27, 1992, the court enjoined CDC from further application or enforcement of the "offensiveness" standard, as provided in paragraph 1.b. and 2.d. of the Revised Grant Terms published on March 30, 1992. Accordingly, effective immediately, recipients of CDC funds are not to use the "offensiveness" standard in reviewing CDC-funded AIDS education materials.

In addition to the finding regarding the constitutionality of the "offensiveness" standard, the court in the May 11, 1992 Gay Men's Health Crisis decision, erroneously indicated that section 2500 of the Public Health Service Act ("PHS Act"), 42 U.S.C. 300ee, and section 318 of the PHS Act, 42 U.S.C 247c, provide the statutory authority for CDC's AIDS prevention programs. In reality, CDC has relied upon the totally separate assistance authority contained in sections 301 and 317 of the PHS Act, 42 U.S.C. 241 and 247b, for CDC's AIDS prevention programs. Although section 2500, et seq., was passed by Congress in 1988 as part of the Health Omnibus Programs Extension (HOPE) Act, Congress has never appropriated funds to CDC to carry out AIDS activities under the HOPE Act.

Nevertheless, because of the May 27, 1992 order of the District Court, and in order to maintain program continuity, CDC has decided, as a matter of discretionary policy, to use the language set forth in section 2500 of the PHS Act as the interim standard for review of AIDS educational materials and programs in place of the language enjoined by the court. This decision by CDC does not reflect a change in position of the agency with respect to the fact that actual funding authority in FY 1992 for CDC's AIDS prevention programs is contained in sections 301 and 317 of the PHS Act.

The Centers for Disease Control thus disagrees with the findings of the court in the Gay Men's Health Crisis decision, and is contemplating seeking an appeal and stay of this decision. In the interim period of time, consistent with the District Court's opinion, recipients in CDC assistance programs should adhere to the revisions of the March 30, 1992 grant terms and conditions which are set forth below:

1. Section 1.b. of the "Basic Principles" section of the document is revised to provide as follows:

"b. Written materials, audiovisual materials, and pictorials should be reviewed by Program Review Panels consistent with the provisions of section 2500 (b), (c), and (d) of the Public Health Service Act, 42 U.S.C. 300ee (b), (c), and (d), as follows:

'Sec. 2500. Use of Funds.

(b) Contents of Programs.—All programs of education and information receiving funds under this title shall include information about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

(c) Limitation.—None of the funds appropriated to carry out this title may be used to provide education or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse.

(d) Construction.—Subsection (c) may not be construed to restrict the ability of an education program that includes the information required in subsection (b) to provide accurate information about various means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene.' "

2. Section 2.d. of the "Program Review Panel" section of the document is revised to provide as follows:

"d. CDC-funded organizations that undertake program plans in other than school-based populations which are national, regional (multistate), or statewide in scope, or that plan to distribute materials as described above to other organizations on a national, regional, or statewide basis, must establish a single Program Review Panel to fulfill this requirement. Such national/regional/state panels must include as a member an employee of a state or local health department, or an appropriate designated representative of such department, consistent with the provisions of section 2.c.(1). Materials reviewed by such a single (national, regional, or state) Program Review Panel do not need to be reviewed locally unless such review is deemed appropriate by the local organization planning to use or distribute the materials. Such national/regional/state organization must adopt a national/regional/statewide standard when applying Basic Principles 1.a. and 1.b."

In the event that further court action in this matter or other developments necessitate a further revision of this

document, the agency will provide timely notice of those further revisions.

The following interim revised terms and conditions, reprinted below in their entirety, are effective immediately.

Dated: June 9, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations Centers for Disease Control.

CONTENT OF AIDS-RELATED WRITTEN MATERIALS, PICTORIALS, AUDIOVISUALS, QUESTIONNAIRES, SURVEY INSTRUMENTS, AND EDUCATIONAL SESSIONS IN CENTERS FOR DISEASE CONTROL ASSISTANCE PROGRAMS

Interim Revisions June 1992

1. Basic Principles

Controlling the spread of HIV infection and AIDS requires the promotion of individual behaviors that eliminate or reduce the risk of acquiring and spreading the virus. Messages must be provided to the public that emphasize the ways by which individuals can fully protect themselves from acquiring the virus. These methods include abstinence from the illegal use of IV drugs and from sexual intercourse except in a mutually monogamous relationship with an uninfected partner. For those individuals who do not or cannot cease risky behavior, methods of reducing their risk of acquiring or spreading the virus must also be communicated. Such messages can be controversial. These principles are intended to provide guidance for the development and use of educational materials, and to require the establishment of Program Review Panels to consider the appropriateness of messages designed to communicate with various groups.

a. Written materials (e.g., pamphlets, brochures, fliers), audiovisual materials (e.g., motion pictures and video tapes), and pictorials (e.g., posters and similar educational materials using photographs, slides, drawings, or paintings) should use terms, descriptors, or displays necessary for the intended audience to understand dangerous behaviors and explain less risky practices concerning HIV transmission.

b. Written materials, audiovisual materials, and pictorials should be reviewed by Program Review Panels consistent with the provisions of section 2500(b), (c), and (d) of the Public Health Service Act, 42 U.S.C. 300ee(b), (c), and (d), as follows:

"Sec. 2500. Use of Funds

(b) *Contents of Programs.*—All programs of education and information receiving funds under this title shall include information about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

(c) *Limitation.*—None of the funds appropriated to carry out this title may be used to provide education or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse.

(d) *Construction.*—Subsection (c) may not be construed to restrict the ability of an education program that includes the information required in subsection (b) to provide accurate information about various means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene."

c. Educational sessions should not include activities in which attendees participate in sexually suggestive physical contact or actual sexual practices.

d. Messages provided to young people in schools and in other settings should be guided by the principles contained in "Guidelines for Effective School Health Education to Prevent the Spread of AIDS" (MMWR 1988;37 [suppl. No. S-2]).

2. Program Review Panel

a. Each recipient will be required to establish or identify a Program Review Panel to review and approve all written materials, pictorials, audiovisuals, questionnaires or survey instruments, and proposed educational group session activities to be used under the project plan. This requirement applies regardless of whether the applicant plans to conduct the total program activities or plans to have part of them conducted through other organization(s) and whether program activities involve creating unique materials or using/distributing modified or intact materials already developed by others. Whenever feasible, CDC funded community-based organizations are encouraged to use a Program Review Panel established by a health department or an other CDC-funded organization rather than establish their own panel. The Surgeon General's Report on Acquired Immune Deficiency Syndrome (October 1986) and CDC-developed materials do not need to be reviewed by the panel unless such review is deemed appropriate by the recipient. Members of a Program Review Panel should:

(1) Understand how HIV is and is not transmitted; and

(2) Understand the epidemiology and extent of the HIV/AIDS problem in the local population and the specific audiences for which materials are intended.

b. The Program Review Panel will be guided by the CDC Basic Principles (in the previous section) in conducting such reviews. The panel is authorized to review materials only and is not empowered either to evaluate the proposal as a whole or to replace any other internal review panel or procedure of the recipient organization or local governmental jurisdiction.

c. Applicants for CDC assistance will be required to include in their applications the following:

(1) Identification of a panel of no less than five persons which represent a reasonable cross-section of the general population. Since Program Review Panels review materials for many intended audiences, no single intended audience shall predominate the composition of the Program Review Panel, except as provided in subsection (d) below. In addition:

(a) Panels which review materials intended for a specific audience should draw upon the expertise of individuals who can represent cultural sensitivities and language of the intended audience either through representation on the panels or as consultants to the panels.

(b) The composition of Program Review Panels, except for panels reviewing materials for school-based populations, must include an employee of a state or local health department with appropriate expertise in the area under consideration who is designated by the health department to represent the department on the panel. If such an employee is not available, an individual with appropriate expertise, designated by the health department to represent the agency in this matter, must serve as a member of the panel.

(c) Panels which review materials for use with school-based populations should include representatives of groups such as teachers, school administrators, parents, and students.

(d) Panels reviewing materials intended for racial and ethnic minority populations must comply with the terms of (a), (b), and (c), above. However, membership of the Program Review Panel may be drawn predominately from such racial and ethnic populations.

(2) A letter or memorandum from the proposed project director, countersigned by a responsible business official, which includes:

(a) Concurrence with this guidance and assurance that its provisions will be observed;

(b) The identity of proposed members of the Program Review Panel, including their names, occupations, and any organizational affiliations that were considered in their selection for the panel.

d. CDC-funded organizations that undertake program plans in other than school-based populations which are national, regional (multistate), or statewide in scope, or that plan to distribute materials as described above to other organizations on a national, regional, or statewide basis, must establish a single Program Review Panel to fulfill this requirement. Such national/regional/state panels must include as a member an employee of a state or local health department, or an appropriate designated representative of such department, consistent with the provisions of Section 2.c.(1). Materials reviewed by such a single (national, regional, or state) Program Review Panel do not need to be reviewed locally unless such review is deemed appropriate by the local organization planning to use or distribute the materials. Such national/regional/state organization must adopt a national/regional/statewide standard when applying Basic Principles 1.a. and 1.b.

e. When a cooperative agreement/grant is awarded, the recipient will:

(1) Convene the Program Review Panel and present for its assessment copies of written materials, pictorials, and audiovisuals proposed to be used;

(2) Provide for assessment by the Program Review Panel text, scripts, or detailed descriptions for written materials, pictorials, or audiovisuals which are under development;

(3) Prior to expenditure of funds related to the ultimate program use of these materials, assure that its project files contain a statement(s) signed by the Program Review Panel specifying the vote for approval or disapproval for each proposed item submitted to the panel; and

(4) Provide to CDC in regular progress reports signed statement(s) of the chairperson of the Program Review Panel specifying the vote for approval or disapproval for each proposed item that is subject to this guidance.

[FR Doc. 92-13973 Filed 6-12-92; 8:45 am]

BILLING CODE 4160-18-M